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U.S. Department of Labor  
200 Constitution Ave. NW  
Washington DC 20210

Sent electronically to [e-ORI@dol.gov](mailto:e-ORI@dol.gov) and through [www.regulations.gov](http://www.regulations.gov)

Ref: RIN [1210-AB32](#); Response to Conflicts of Interest Proposed Rule

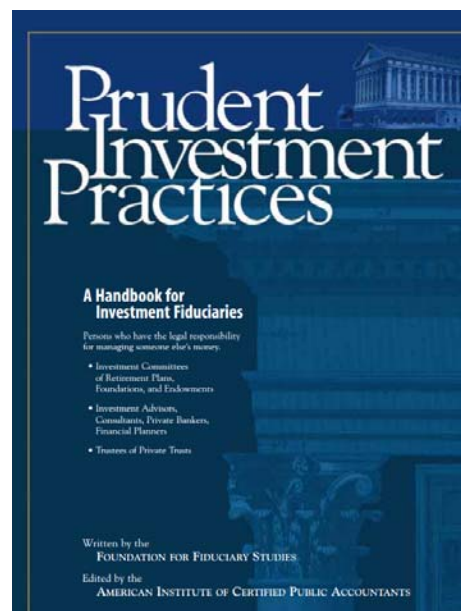
Dear Madam or Sir:

***Existing fiduciary best practices surpass DOL's repropoed definition.***

It is my professional opinion that the U.S. Department of Labor's (DOL) repropoed fiduciary definition will cause more harm than good:

1. The repropoed fiduciary definition does not take into account the full scope and depth of *generally accepted fiduciary best practices* that are fully substantiated by existing regulations, regulatory opinion letters and bulletins, and case law.

[See fiduciary handbook, *Prudent Investment Practices*, which was first published in 2003. <http://www.sec.gov/nb/comments/akendal033105-hand1.pdf> The latest research on a uniform procedurally prudent process is included in the recently published book, *LeaderMetrics®: What Key Decision-makers Need to Know When Serving in a Critical Leadership Role* (Trone and Wattman, 2014, published by 3ethos [www.3ethos.com](http://www.3ethos.com)). The legal substantiation for the uniform procedurally prudent process also is available through 3ethos.]



2. The Council of Economic Advisors (CEA) released on February 19, 2015 research which showed that conflicted advice is costing retirement savers more than \$17 billion dollars a year. The DOL has relied on this research in the construct of its repropounded definition. Unfortunately, neither the DOL nor the CEA took into account the positive impact *generally accepted fiduciary best practices* are having on retirement savings. As a result, I do not believe the CEA's findings are accurate; are overly inflated; and, were released for the primary purpose of inflaming and unnecessarily alarming the public.
3. If passed, the new rules will not meet the stated objective of protecting retirement savings. To the contrary, the new rules will result in increased complexity in the oversight of retirement advice. The new rules will make it harder for good advisors to provide *generally accepted fiduciary best practices*, and make it easier for dishonest advisors to hide their mendacious activities.

## Background

I am one of three co-founders and CEO of 3ethos and have been actively involved with the fiduciary movement for more than 28 years. I have authored or coauthored eleven books on the subject of fiduciary responsibility; served as an advisor to the DOL's ERISA Advisory Committee; testified on fiduciary practices before the U.S. Senate Finance Committee; developed the curriculums for the GFS® (Global Financial Steward), AIF (Accredited Investment Fiduciary) and AIFA (Accredited Investment Fiduciary Analyst) professional designations; served as an expert witness on pay-to-play investigations; trained the Directors of the Federal Retirement Thrift on fiduciary practices; and, have trained more than 10,000 financial advisors and brokers on fiduciary responsibility.

In 2000, I founded the Foundation for Fiduciary Studies. The mission of the Foundation was to define the details of *generally accepted fiduciary best practices*. The Directors of the Foundation were fiduciary experts who represented the breadth of different fiduciary constituents:

- Trustees of defined contribution plans;
- Trustees of defined benefit plans;
- Trustees of Taft-Hartley plans;
- Trustees of public retirement plans;
- Investment committee members of foundations and endowments;
- Family offices and personal trusts;
- Socially-responsible investors;
- Money management firms; and
- Broker-dealers.

The result of the Foundation's work was the production in 2003 of, ***Prudent Investment Practices***, the first handbook on *generally accepted fiduciary best practices*. As previously stated, the handbook can be viewed at <http://www.sec.gov/nb/comments/akendal033105-hand1.pdf>

The handbook covers the details of 27 fiduciary practices, three of which deal specifically with the disclosure, control and management of fees and expenses – the subject of the DOL’s repropoed fiduciary definition. However, the new definition does not address the remaining 24 widely recognized practices; such as, the importance of asset allocation, preparing an investment policy statement, and conducting a thorough due diligence process when selecting and monitoring a retirement saver’s investment options.

Does this mean that the DOL’s new fiduciary definition is **ONLY** concerned with fees and expenses?

1. Is the DOL saying that the scope of fiduciary responsibility has now been reduced solely to the management of conflicts associated with fees and expenses?
2. Or, do all *generally accepted fiduciary best practices* remain in effect, except now more attention is going to be paid to the management and control of fees and expenses?

The DOL has not made the answers to these questions clear, and no organization or association should be lending its support or approval for the repropoed fiduciary definition until these questions are answered.

## A Uniform Fiduciary Standard of Care

The Foundation’s 27 *generally accepted fiduciary best practices* are best viewed against the backdrop of a 5-step decision-making process:

1. **Step 1 – Analyze:** Define the client’s (plan sponsor or plan participant/beneficiary) goals and objectives;
2. **Step 2 – Strategize:** Diversify the client’s investment portfolio to a specific risk/return profile;
3. **Step 3 - Formalize:** Prepare and maintain for the client a written investment policy statement (IPS);
4. **Step 4 – Implement:** Implement the client’s IPS with prudent experts; and
5. **Step 5 – Monitor:** Monitor on a periodic basis the client’s IPS to demonstrate how the client is progressing towards meeting their goals and objectives.

The prudent management of fees and expenses can impact all five steps. For example, a client may state as a goal and objective (Step 1) that they are not fee sensitive, provided that their investment strategy and supporting services warrant the additional cost. Likewise, an increase in asset classes in a client’s investment strategy (Step 2) will often result in increased expenses associated with the management and monitoring of the client’s investment strategy.

**If a fiduciary skipped or did not appropriately execute any one of the five Steps, the resulting drag on investment performance would be much greater than the “cost” of conflicted advice as estimated by CEA. The management of fees and expenses is important, but not as important as identifying the client’s goals and objectives; properly diversifying the client’s investment portfolio; preparing the client’s IPS; prudently implementing the client’s IPS; and, monitoring the client’s investment strategy on an ongoing basis.**

## **Calculating the Cost of a Fiduciary Standard**

It also should be noted that the implementation of *uniform fiduciary best practices* comes with a cost – something that has not been taken into account by either the DOL or the CEA in their recent pronouncements.

At a minimum, the provision of a fiduciary standard, as described above, would require 12 hours of work per annum by a typical retirement advisor. If the retirement advisor charged \$175/hour for their effort (a conservative figure), they would need to generate, at least \$2,100, per client engagement. Another \$1,500 would have to be added to each engagement to cover the cost of compliance and oversight and compensate the advisor for assuming the liability of serving as a fiduciary. That brings the total compensation to \$3,600 per client engagement, per year.

Apply \$3,600 to the median IRA rollover account balance of \$23,785 (as reported by the Employee Benefit Research Institute [www.ebri.org](http://www.ebri.org)) and the expense of providing a fiduciary standard of care would represent 15% of the IRA account balance per year – that’s 15 times more than the cost of conflicted advice as estimated and reported by the CEA.

**In other words, the provision of a fiduciary standard in accordance with existing ERISA and DOL requirements would be cost prohibitive to any account of less than \$360,000. [For a \$360,000 account balance, \$3,600 – the cost of providing a fiduciary standard - would be 1%, or 100 basis points.] If the DOL’s repropose fiduciary definition is passed, the effect would be to further drive up these costs because of increased complexity associated with compliance.**

## **Summary**

With regards to the fiduciary’s duty to manage fees and expenses, we can simply state that:

*A fiduciary has a duty to control and account for a client's investment fees and expenses. The fiduciary must inform the client of every party that has been compensated from, or by, the client's account; and, demonstrate that the compensation is fair and reasonable for the level of services being rendered.*

The DOL consumed 444 pages to express what I just communicated in 53 words. And, this simple fiduciary explanation does not require the promulgation of any new rules and regulations.

The DOL will benefit from talking to people who are familiar with a fiduciary standard of care before they progress with the current reposed fiduciary definition. The primary reason why the Foundation for Fiduciary Studies prepared its handbook, ***Prudent Investment Practices***, 12 years ago was to provide the industry a checklist of *generally accepted fiduciary best practices* so as to avoid misunderstandings of what it means to serve as a fiduciary.

There's a better approach to improving retirement savings – educate retirement advisors and plan sponsors on a prudent decision-making process. More rules and regulations will not improve the behavior of dishonest financial advisors and brokers; more rules and regulations will only make it more difficult for honest advisors to serve their clients.

We should be supporting those professionals in the financial services industry who have the passion and discipline to protect the long-term interests of others, and not disparage an entire industry because of the conduct of a few. I believe the DOL's reposed fiduciary definition will not help American retirement savers; it will only add more paperwork and complexity.

Lead to serve;



Donald B. Trone, GFS®  
Founder and CEO